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FILE HR 120-1

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ROUTING AND RECORD SHEET

Executive Registry 74-3670

SUBJECT: (Optional)

FROM: Acting Legislative Counsel	EXTENSION 6121	NO.
		DATE 23 May 1974

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. Director	5/24	5/24	[illegible]	Attached for your signature are revised reports on bills concerning Government secrecy which you recently approved for transmittal to OMB for clearance.
2. OLC				Our reports ended* with a request to exempt Intelligence Sources and Methods. But OMB has advised that the Administration is so strongly opposed to the bills that it is directing that any suggested revisions of the bills be dropped from the reports of all agencies.
3.				
4.				
5.				
6.				
7.				
8.				STATOTHR [redacted]
9.				Acting Legislative Counsel
10.				
11.				
12.				
13.				
14.				
15.				

* Only changes are with [illegible] of each letter to be changed to that approved by Exec

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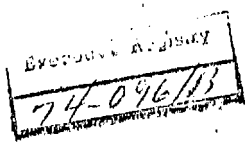
OLC 74-0983

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505



28 MAY 1974

Honorable Chet Holifield, Chairman
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in reply to your request for this Agency's views on H. R. 12004, which amends the Freedom of Information Act to provide for the classification and declassification of official information in the interest of national defense.

H. R. 12004 establishes a statutory program for classifying, downgrading, and declassifying official Government information, which in general parallels the program established by Executive Order 11652, "Classification and Declassification of National Security Information and Material." Underlying our comments is the necessity for preserving the sensitive Intelligence Sources and Methods used in gathering foreign intelligence information. The classification of foreign intelligence information carries with it the added burden of protecting the Intelligence Sources and Methods that are involved in its collection and analysis. Grave damage to the nation's security could result if such Sources and Methods are not adequately protected. For example, vulnerable foreign sources would be understandably reluctant to provide information if they could not rely upon the protection of their identity.

The Congress recognized these underlying considerations in the National Security Act of 1947, Section 102(d)(3), which provides as follows:

> "That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure."

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We urge consideration of this background in evaluating our comments on H. R. 12004. Our analysis and comments on pertinent provisions of the bill follow:

Proposed System of Classification

a. Section 3 of the bill establishes a statutory program for the classification of official information. Such classified information is to be known as "national defense information" and its degree of sensitivity must relate to "the national defense of the United States." Categories of "Top Secret," "Secret" and "Confidential" are the designators of classified information under specified criteria. No specific examples of those matters requiring protection are given.

Comment

The criteria and designators for classification categories in H. R. 12004 are the same as in Executive Order 11652, except that in defining that official information requiring protection, the Executive Order uses the term "national security," which is further defined as being "in the interest of the national defense or foreign relations of the United States." The Order also lists specific examples of those matters requiring protection. Included are Intelligence Sources and Methods.

Since H. R. 12004 does not define "national defense of the United States" it is not clear as to what information would come under this category. The term alone would appear to include only military information and to exclude information which concerns foreign policy and other matters of national importance, but which are not directly related to national defense. If a classification program is made statutory it should set forth clear and full definitions to avoid ambiguities.

b. Under the bill, only a limited number of identified agencies are authorized to classify information. The President can authorize only offices within the Executive Office.

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Comment

The authority of agencies to classify and at what levels should be flexible and discretionary with the President rather than fixed by statute. Matters of national interest requiring protection are not necessarily confined to a limited number of agencies within the Executive. For example, recently the Treasury Department became a member of the United States Intelligence Board and there has been an exchange of intelligence information at the Top Secret level. Under H. R. 12004, Treasury could not classify information above Secret.

c. Under H. R. 12004, the identity of the classifier must appear on all classified documents and the names and addresses of all persons authorized to classify must be furnished quarterly to the Classification Review Commission and, upon request, to any member of Congress or the Comptroller General.

Comment

The CIA cannot disclose names and addresses of all personnel having authority to classify information. Section 6 of the Central Intelligence Act of 1949 (50 U.S.C.A. 403g) exempts CIA from the provisions of any law requiring the disclosure of the names of any of its employees.

Proposed System of Downgrading and Declassification

Section 3 of H. R. 12004 provides for the automatic downgrading of classified information to a lower classification at one-year intervals until declassified. Only certain categories of Top Secret classified information are excluded from this scheduled declassification. These include information expressly exempt by statute or which discloses Intelligence Sources and Methods. The exempted categories of Top Secret material are to be downgraded to Secret at the end of one year from date of classification and then submitted to a Classification Review Commission, established under the bill, for its determination as to declassification. The Commission may extend the classification if the President submits a written justification; however, the Commission at any time may order declassification by a two-thirds vote.

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Comment

Intelligence information cannot be subject to a broad program of automatic downgrading and declassification. Reports must be carefully reviewed prior to declassification to assure protection to Intelligence Sources and Methods. Further, the review must be conducted by experienced Agency intelligence analysts since the ultimate statutory authority for protection rests with the Director of Central Intelligence.

H. R. 12004, by attempting to remove the judgment and authority of the Director of Central Intelligence in the declassification of all intelligence information, including Top Secret, is in direct conflict with the Director's statutory responsibility to protect Intelligence Sources and Methods. The decision to declassify has even more import than the decision to classify and must rest on the judgment of the Director.

Authority of the Classification Review Commission

Under the bill, the Classification Review Commission is authorized to prescribe the standards and procedures for the handling of official information and to assure the trustworthiness of individuals who require access. The Commission is also given broad subpoena powers to require the appearance of witnesses and the production of any evidence relating to matters under its investigation. The Commission has the authority to investigate complaints from within or outside the Government of alleged improper classification of official information. Decisions of the Commission are subject to court review.

Comment

The broad authorities of the Classification Review Commission would directly conflict with the Director's statutory responsibility to protect Intelligence Sources and Methods, and his other

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authorities relating to the Agency's overall personnel and physical security program. Established security disciplines carefully developed over the years would be seriously impaired.

For the above reasons, the Central Intelligence Agency opposes the enactment of H. R. 12004 since it does not provide adequate protection for Intelligence Sources and Methods.

This Agency was established to meet the critical need for information at the national levels of Government. Since the Government serves the people, we clearly recognize that they must be informed on matters of national importance. Our basic responsibilities, however, are to the elected and appointed officials in the Executive and Legislative Branches of Government consistent with the imperative importance of protecting Intelligence Sources and Methods, as prescribed by the Congress. Whenever possible we do publish unclassified material and will continue to do so. This effort is however consistent with our basic statutory responsibilities and consistent with the protection of those security factors vital to the continued effectiveness of the Agency.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

STATINTL [redacted]

W. E. Colby
Director

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